

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

GREGORY AKSELROD, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

HOOZIP, INC. d/b/a REIRAIL,

Defendant.

NO.

**COMPLAINT—CLASS ACTION**

**DEMAND FOR JURY TRIAL**

Greg Akselrod, individually and on behalf of others similarly situated, alleges the following against Defendant Hoozip, Inc. d/b/a REIRail (“REIRail”).

**I. NATURE OF ACTION**

1. As the Supreme Court recently explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back. As relevant

1 here, the Telephone Consumer Protection Act of 1991, known as the TCPA, generally  
 2 prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political*  
 3 *Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at \*5 (July 6, 2020).

4 2. REIRail provides lead generation services to real estate agents.

5 3. These lead generation services include skip tracing, text message blasting, and  
 6 other marketing tools.

7 4. One of those tools is the “RVM Engine.”

8 5. “RVM” stands for “ringless voicemail.”

9 6. Ringless voicemail plays a pre-recorded message into the voicemail of call  
 10 recipients.

11 7. REIRail itself engages in unsolicited ringless voicemail pre-recorded calls to  
 12 solicit new customers to its platform to use the “RVM Engine.”

13 8. REIRail made an unsolicited ringless voicemail call to Plaintiff on his cellular  
 14 telephone using a pre-recorded message.

15 9. Plaintiff now files this lawsuit seeking injunctive relief, requiring REIRail to  
 16 stop placing unsolicited calls to cellular telephone numbers, as well as an award of statutory  
 17 damages and costs to class members.

## 18 **II. JURISDICTION AND VENUE**

19 10. This Court has federal question subject matter jurisdiction over this action under  
 20 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act,  
 21 47 U.S.C. §227 (“TCPA”).  
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11. This Court has personal jurisdiction over REIRail, and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant REIRail made the call to the Plaintiff in this District.

### III. PARTIES

12. Plaintiff Greg Akselrod resides in King County, Washington.

13. Defendant Hoozip, Inc. d/b/a REIRail is a Delaware corporation.

### IV. TCPA BACKGROUND

#### A. The TCPA Prohibits Automated Telemarketing Calls

14. The TCPA makes it unlawful to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service or that is charged per the call. *See* 47 U.S.C. § 227(b)(1)(A)(iii).

15. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A) or 47 U.S.C. § 227(b)(1)(B). *See* 47 U.S.C. § 227(b)(3).

16. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

17. The FCC also recognized that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations*

1 *Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, Report and Order,  
2 18 F.C.C. Rcd. 14014, 14115 ¶ 165 (2003).

3 18. In 2013, the FCC required prior express written consent for all autodialed or  
4 prerecorded telemarketing calls (“robocalls”) to wireless numbers and residential lines.  
5 Specifically, it ordered that:

6 [A] consumer’s written consent to receive telemarketing robocalls  
7 must be signed and be sufficient to show that the consumer: (1)  
8 received “clear and conspicuous disclosure” of the consequences  
9 of providing the requested consent, i.e., that the consumer will  
10 receive future calls that deliver prerecorded messages by or on  
11 behalf of a specific seller; and (2) having received this  
12 information, agrees unambiguously to receive such calls at a  
telephone number the consumer designates.[] In addition, the  
written agreement must be obtained “without requiring, directly or  
indirectly, that the agreement be executed as a condition of  
purchasing any good or service.[]”

13 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,  
14 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

## 15 V. FACTUAL ALLEGATIONS

16 19. Plaintiff’s telephone number, (XXX) XXX-3579, is assigned to a cellular  
17 telephone service.  
18

19 20. Plaintiff never has been a REIRail customer and never consented to receive  
20 calls from REIRail.

21 21. REIRail made a pre-recorded call to Plaintiff’s cellular telephone on November  
22 26, 2020.

23 22. The pre-recorded message played on the call to the Plaintiff was as follows:

24 This is Nicky from REIRail. Giving you a call today to see if there  
25 is anything I can help you with or if you have any questions about  
26 sending your own voicemails. Please feel free to give me a call  
27 and we can discuss your goals and needs. We can go over which

REIRail product will best help you in your everyday business and achieve your business goals. I'd be happy to share with you any, uh, best practices and show you how the top realtors real estate investors and wholesalers are using REIRail today to achieve massive results and get that everyday freedom in their everyday lives. Please feel free to call or text me anytime at 571-207-7542. If I don't hear back from you, that's ok, I just hope you really enjoy our product.

23. Plaintiff was not interested and had not requested information regarding those products.

24. The telephone number left on the pre-recorded message to get in touch with the caller was 571-207-7542.

25. As recently as November 21, 2020, calls from that number were reported as “robocalls” and telemarketing spam. *See* <https://phonespam.report/for-571-207-7542> (last visited November 30, 2020).

26. The REIRail website advises users that REIRail users should be aware of the TCPA when using the ringless voicemail product. <https://support.reirail.com/ringless-voicemail/do-not-call-list/why-dont-all-the-names-on-my-list> (last visited November 30, 2020).

## VI. CLASS ACTION ALLEGATIONS

27. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully stated herein.

28. Plaintiff brings this action on behalf of himself and the following class (the “Class”) pursuant to Federal Rule of Civil Procedure 23.

29. Plaintiff proposes the following Class definition, subject to amendment as appropriate:

**Robocall Class:** All persons within the United States: (1) to whose cellular telephone number or other number for which they are charged for the call; (2) Defendant (or an agent acting on behalf of

1 Defendant) placed a telemarketing call; (3) within the four years  
2 prior to the filing of the Complaint; and (4) using an identical or  
3 substantially similar pre-recorded message used to place the  
4 telephone call to Plaintiff.

5 30. Plaintiff is a member of and will fairly and adequately represent and protect the  
6 interests of the Class as he has no interests that conflict with any of the class members.

7 31. Excluded from the Class are counsel, Defendant, any entities in which  
8 Defendant has a controlling interest, Defendant's agents and employees, any judge to whom  
9 this action is assigned, and any member of such judge's staff and immediate family.

10 32. Plaintiff and all members of the Class have been harmed by the acts of  
11 Defendant, including, but not limited to, the invasion of their privacy, annoyance, waste of  
12 time, the use of their telephone power and network bandwidth, and the intrusion on their  
13 telephone that occupied it from receiving legitimate communications.

14 33. This Class Action Complaint seeks injunctive relief and money damages.

15 34. The Class as defined above is identifiable through Defendant's dialer records,  
16 other telephone records, and telephone number databases.

17 35. Plaintiff does not know the exact number of members in the Class, but Plaintiff  
18 reasonably believes Class members number, at minimum, in the hundreds.

19 36. The joinder of all Class members is impracticable due to the size and relatively  
20 modest value of each individual claim.

21 37. Additionally, the disposition of the claims in a class action will provide  
22 substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits.

23 38. There are well defined, nearly identical questions of law and fact affecting all  
24 parties. The questions of law and fact, referred to above, involving the Class claims  
25 predominate over questions that may affect individual Class members.  
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1           39.     There are numerous questions of law and fact common to Plaintiff and to the  
2 proposed Class, including but not limited to the following:

- 3                   (a)     Whether Defendant used pre-recorded messages to send calls;
- 4                   (b)     Whether Defendant made calls to Plaintiff and members of the Class  
5 without first obtaining prior express written consent to make the calls;
- 6                   (c)     Whether Defendant's conduct constitutes a violation of the TCPA; and
- 7                   (d)     Whether members of the Class are entitled to treble damages based on  
8 the willfulness of Defendant's conduct.

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10           40.     Further, Plaintiff will fairly and adequately represent and protect the interests of  
11 the Class. Plaintiff has no interests which are antagonistic to any member of the Class.

12           41.     Plaintiff has retained counsel with substantial experience in prosecuting  
13 complex litigation and class actions, and especially TCPA class actions. Plaintiff and his  
14 counsel are committed to vigorously prosecuting this action on behalf of the other members of  
15 the Class, and have the financial resources to do so.

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17           42.     Common questions of law and fact predominate over questions affecting only  
18 individual Class members, and a class action is the superior method for fair and efficient  
19 adjudication of the controversy. The only individual question concerns identification of Class  
20 members, which will be ascertainable from records maintained by Defendant and/or its agents.

21           43.     The likelihood that individual members of the Class will prosecute separate  
22 actions is remote due to the time and expense necessary to prosecute an individual case.

23           44.     Plaintiff is not aware of any litigation concerning this controversy already  
24 commenced by others who meet the criteria for class membership described above.

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**FIRST CAUSE OF ACTION**

**Violation of the Telephone Consumer Protection Act  
(47 U.S.C. 227(b) on behalf of the Robocall Class)**

45. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

46. The foregoing acts and omissions of Defendant and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, and delivering pre-recorded messages to the cellular telephone numbers of Plaintiff and members of the Class.

47. As a result of Defendant's and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf's violations of the TCPA, 47 U.S.C. § 227, Plaintiff and members of the Class presumptively are entitled to an award of \$500 in damages for each and every call made to their residential or cellular telephone numbers using an artificial or pre-recorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

48. If the Defendant's conduct is found to be knowing or willful, Plaintiff and members of the Class are entitled to an award of up to treble damages.

49. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendant and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf from violating the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, to any cellular telephone numbers using an artificial or prerecorded voice in the future.



**VII. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief:

A. Injunctive relief prohibiting Defendant from calling telephone numbers advertising their goods or services, except for emergency purposes, to any number using a pre-record message in the future;

B. That the Court enter a judgment awarding Plaintiff and all Class members statutory damages of \$500 for each violation of the TCPA and \$1,500 for each knowing or willful violation; and

C. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the lawyers and law firms representing Plaintiff as counsel for the Class;

D. Such other relief as the Court deems just and proper.

**VIII. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

RESPECTFULLY SUBMITTED AND DATED this 2nd day of December, 2020.

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